

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

| | | |
|-------------------------------|---|--------------------|
| EDWARD BINIEK and |) | CASE NO. 3:14-1154 |
| MARLA BINIEK, |) | |
| |) | (JUDGE MANNION) |
| Plaintiffs |) | |
| |) | |
| v |) | |
| |) | |
| MARMAXX OPERATING |) | |
| CORPORATION d/b/a TJ MAXX and |) | |
| JOFRAN, INC., |) | |
| |) | |
| Defendants |) | |

**PLAINTIFFS' RESPONSE TO DEFENDANT MARMAXX OPERATING
CORPORATION'S MOTION TO PRECLUDE TESTIMONY OR ARGUMENT
REFERRING OR RELATING TO POST-INCIDENT DESTRUCTIVE TESTING THAT
CAUSED ADDITIONAL DAMAGE/ SPLITTING OF THE BLOCKS**

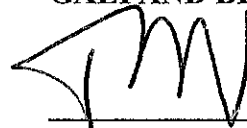
Defendant Marmaxx Operating Corporation ("Marmaxx") has filed a Motion in Limine to preclude testimony or argument referring or relating to post-incident destructive testing that caused additional damage/ splitting of the chair blocks. In its Motion, Defendant Marmaxx references Co-Defendant Jofran, Inc.'s "expert" report in which Jofran's expert Duane Ferguson suggests Marmaxx engaged in destructive testing that caused whatever damage existed in the chair. Plaintiff agrees with Co-Defendant Marmaxx that Mr. Ferguson and Jofran should not be permitted to introduce testimony or argument regarding this topic as there is an utter dearth of evidence suggesting the damage to the chair occurred in post-accident testing as opposed to prior to Plaintiff sitting on the chair that subsequently collapsed. As is typical of Mr. Ferguson, this proffered opinion is nothing more than wild unfounded conjecture. Accordingly, Plaintiffs filed a Daubert Motion on September 11, 2015 to preclude Mr. Ferguson from testifying at all as he is unqualified to opine on matters of furniture-making and woodwork, uses no discernible scientific

method, and relies on pure conjecture as opposed to evidence of record. All of the evidence of record indicates that the chair was damaged at the time Plaintiff sat on it. Plaintiffs join in Defendant Marmaxx's reasons for granting its Motion in Limine to Preclude Testimony or Argument Referring or Relating to Post-Incident Destructive Testing that Caused Additional Damage/Splitting of the Blocks.

Respectfully submitted,

GALFAND BERGER, LLP

By:

A handwritten signature in black ink, appearing to be 'RJ', is written over a horizontal line.

RICHARD M. JUREWICZ, ESQUIRE

Attorney for Plaintiffs

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CERTIFICATION OF SERVICE

I, Richard M. Jurewicz, Esquire, do hereby certify that service of a true and correct copy of the within PLAINTIFFS' RESPONSE TO DEFENDANT MARMAXX OPERATING CORPORATION'S MOTION TO PRECLUDE TESTIMONY OR ARGUMENT REFERRING OR RELATING TO POST-INCIDENT DESTRUCTIVE TESTING THAT CAUSED ADDITIONAL DAMAGE/SPLITTING OF THE BLOCKS was made on September 28, 2015, Electronic E-Filing upon the following:

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